



Texas Department of Insurance

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RQ-799

October 18, 1994

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Opinion Committee

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ATTN: Opinion Committee
The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

RE: Request for Information Concerning Texas Medical Liability Insurance
Underwriting Association (JUA)

Dear Attorney General Morales:

On September 30, 1994, this agency received the attached request for information concerning the above referenced matter. Some of the requested information will be provided to the requestor, however the Texas Department of Insurance (TDI) contends that the remaining requested information is exempt from public disclosure under the Texas Open Records Act, TEX. GOV'T CODE ANN. §§ 552.101 and 552.112. This agency is requesting your determination on the requested information for the reasons discussed below.

Some of the information sought to be exempted from disclosure is protected under TEX. GOV'T CODE ANN. § 552.101 of the Open Records Act. This section exempts from public disclosure "information deemed confidential by law." As enacted by the 73rd Texas Legislature, effective September 1, 1993, TEX. INS. CODE ANN. art. 1.15 § 9 provides:

A final or preliminary examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under the open records law....

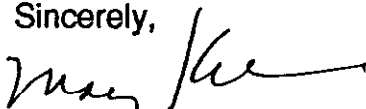
One of the requested reports was processed with an "as of" date of December 31, 1993. Consequently, this report and the related work papers are deemed confidential by statute and should be exempt from public disclosure under TEX. GOV'T CODE ANN. § 552.101.

Additionally, the examination report and work papers, which were prepared by TDI, are in regards to the financial condition of the referenced matter. The work papers related to the referenced matters are not made public record, as provided in 28 TEX. ADMIN. CODE § 7.83(a)(8). The examination report and work papers were prepared by or for the use of this agency, which is responsible for the regulation and supervision of insurance companies. An insurance company is a "financial institution," as that term is used in § 552.112 of the Open Records Act, and the examination report and work papers prepared by this agency are exempt from public disclosure. Tex. Att'y Gen. ORD-158 (1977). The examination report and work papers should therefore be withheld from public disclosure under TEX. GOV'T CODE ANN. § 552.112, as interpreted in Open Records Decision Nos. 158 (1977), 483 (1987), OR91-210 (1991), and OR92-447 (1992).

It is absolutely imperative for the regulatory efforts of TDI that the examination reports remain confidential. The harm that could occur to an agency by suspicion and innuendo within the insurance industry due to rumored examination findings could conceivably prove irreparable to the industry. In fairness to all insurance agencies, TDI must be allowed to examine and investigate, discipline, and rehabilitate agencies in statutory confidentiality. Positive regulatory outcomes cannot be produced otherwise.

Your time and attention to this matter are appreciated. Please forward all correspondence related to this matter to Alesia L. Sanchez, Legal Assistant, Legal Services, 110-1A.

Sincerely,



Mary Keller
Senior Associate Commissioner

cc: Norton Rosenthal
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
200 Crescent Court
Suite 1500
Dallas, Texas 75201